SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SHAWN C. CARTER, S. CARTER ENTERPRISES, MARCY MEDIA HOLDINGS, LLC and MARCY MEDIA, LLC, *Petitioners*, -against- ICONIX BRAND GROUP, INC. and ICON DE HOLDINGS, LLC, *Respondents*.	Index No.: _____ Commercial Division Part __

PETITIONERS' MEMORANDUM OF LAW IN SUPPORT OF THE ORDER TO SHOW CAUSE FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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Petitioners Shawn C. Carter, S. Carter Enterprises, Marcy Media Holdings, LLC and Marcy Media, LLC, submit this memorandum of law in support of their application for a temporary restraining order and preliminary injunction against Respondents Iconix Brand Group, Inc. ("Iconix") and Icon DE Holdings, LLC ("Icon DE," and together with Iconix, the "Respondents") pending resolution of the Article 75 Petition for a stay of arbitration.

PRELIMINARY STATEMENT

Through this proceeding, Petitioners seeks a preliminary and permanent stay of an ongoing arbitration before the American Arbitration Association (the "AAA") necessitated by AAA procedures that violate New York law and render the otherwise applicable arbitration clause void as against public policy.

Petitioner Shawn C. Carter is the celebrated rap artist known worldwide as JAY-Z and one of the most successful African-American male entrepreneurs in history. This dispute centers on one of his businesses, which was named after the Marcy Houses, a housing project in Brooklyn with predominantly black residents where Mr. Carter grew up.

Respondent Iconix is a publicly traded corporation that seeks to profit by licensing brands built by others, such as Mr. Carter. Facing serious financial distress, with its stock now trading at pennies on the dollar, Iconix has engaged in a series of desperate litigation gambits of which this is merely the latest installment. In addition to an unmeritorious trademark lawsuit pending in the Southern District of New York, Iconix separately commenced an arbitration against Petitioners on October 1, 2018, presumably seeking to put pressure on certain parties—who are also defendants in the trademark action—by suddenly demanding financial information about the businesses that they had not received in the ordinary course of performance.

After a preliminary conference with the AAA, Mr. Carter and his companies sought to choose an arbitrator pursuant to the parties' agreement, which required consultation of a list of

more than 200 prospective neutrals who specialize in "Large and Complex Cases." When Mr. Carter began reviewing arbitrators on the AAA's Search Platform, however, he was confronted with a stark reality: he could not identify a single African-American arbitrator on the "Large and Complex Cases" roster, composed of hundreds of arbitrators, that had the background and experience to preside over the Arbitration. After repeated requests to the AAA for diverse arbitrators with expertise in complex commercial law, the AAA was able to provide only three neutrals it identified as African-American: two men—one of whom was a partner at the law firm representing Iconix in this arbitration and thus had a glaringly obvious conflict of interest—and one woman.

The AAA's lack of African-American arbitrators with the expertise necessary to arbitrate "Large and Complex Cases" came as a surprise to Petitioners, in part because of the AAA's advertising touting its diversity. This blatant failure of the AAA to ensure a diverse slate of arbitrators for complex commercial cases is particularly shocking given the prevalence of mandatory arbitration provisions in commercial contracts across nearly all industries, which undoubtedly include minority owned and operated businesses. The AAA's arbitration procedures, and specifically its roster of neutrals for large and complex cases in New York, deprive black litigants like Mr. Carter and his companies of the equal protection of the laws, equal access to public accommodations, and mislead consumers into believing that they will receive a fair and impartial adjudication.

Where, as here, a contract violates New York law, New York courts do not hesitate to invalidate that contract provision as void as against public policy, notwithstanding the fact that the parties willingly agreed to the provision. And when an arbitration provision violates public policy, New York courts routinely stay the arbitration. The AAA's failure to provide a venire of

arbitrators that includes more than a token number of African-Americans renders the arbitration provision in the contract void as against public policy. Accordingly, Petitioners seek a preliminary injunction staying the pending arbitration under CPLR 7503(b) for a minimum of ninety days, so that Petitioners may work with AAA to include sufficient African-American arbitrators from which the parties may choose. Further, in light of the November 30, 2018 deadline for the selection of arbitrators in the Arbitration, Petitioners request a temporary stay while this Court considers this application for the preliminary injunction and permanent stay. Should the parties and the AAA be unable to remedy the serious deficiencies identified above in the 90-day time period, Petitioners request that the Court issue a permanent stay of the arbitration on the ground that the arbitration clause is void as against public policy.

STATEMENT OF FACTS

Petitioner Shawn C. Carter, professionally known as JAY-Z, is an African-American entrepreneur and business owner, born in Brooklyn, New York. Petition ¶¶ 20-21. Mr. Carter has seen great success in both his music and business careers. *Id.* ¶ 22. In music, Mr. Carter has recorded thirteen studio albums and has won more than 100 awards, including twenty-one Grammy Awards. *Id.* Mr. Carter has also launched several highly recognized and profitable apparel brands, including Rocawear, and, after 2008, Roc Nation, which is managed and developed by Roc Nation, LLC. *Id.* Prior to Rocawear's acquisition by Iconix in 2007, the brand had become a huge success for clothing, footwear, fragrances, and fashion accessories. *Id.* ¶ 23.

Iconix is a brand-management company that owns and licenses a portfolio of consumer brands. *Id.* ¶ 24. On March 6, 2007, Iconix purchased the clothing brand Rocawear and a clearly defined set of related trademarks, which was set out in an Asset Purchase Agreement ("APA"). *Id.* The parties also entered into a Membership Interest Purchase Agreement ("MIPA), which granted Iconix a minority membership interest in March Holdings. *Id.* ¶ 25. After a dispute over a series

of transactions, Mr. Carter, S. Carter Enterprises, Roc Nation, Iconix, and Icon DE Holdings entered into a Master Settlement Agreement ("MSA") on July 6, 2015. *Id.* ¶ 26. Both the MIPA and MSA include parallel arbitration clauses to resolve disputes between the parties arising out of or relating to the agreements. *Id.* ¶ 27. Both provisions require that the arbitration shall be administered by AAA in accordance with the AAA's Commercial Arbitration Rules, call for arbitration to take place in New York, New York, and are governed by New York law. *Id.* Following a dispute over the requirements of the MSA and the rights under the March Holdings Operating Agreement, the Respondents filed a Demand for Arbitration against Petitioners with the AAA on October 1, 2018. *Id.* ¶ 28.

The arbitration clause specifically calls for three arbitrators, "unless the Parties are able to agree on a single arbitrator." *Id.* ¶ 29. If the parties cannot agree, AAA's commercial panel will appoint a panel of three arbitrators of its choosing. *Id.* After an administrative conference call with the AAA, the parties agreed that if they could not mutually agree on an arbitrator, they would each submit four names from the AAA's "Large and Complex Cases" roster, which is narrower than AAA's National Roster. *Id.* ¶ 30. Then, the AAA would add four names and send that larger list to the parties, who would then commence striking names. *Id.* The parties agreed to use the AAA's Arbitrator Search Platform to select an arbitrator, and the AAA provided search tips for using the Platform. *Id.* The Platform also allowed the parties to access AAA's National Roster of Arbitrators. *Id.*

In its attempt to find a suitable list of arbitrators to submit to the AAA, Petitioners' counsel reviewed more than 200 potential arbitrators in the New York area from the Large and Complex Cases roster. *Id.* ¶ 31. Of these 200 potential arbitrators, however, Petitioners' counsel were unable to identify a single African-American arbitrator with the necessary expertise. *Id.* After

Petitioners raised their concerns with the AAA, noting that Mr. Carter is black, and asked the AAA to provide the names of "neutrals of color," AAA responded by providing the names of six individuals it described as arbitrators "of color." *Id.* ¶ 32. Of those six candidates, one appears to be Asian-American, another South Asian, and a third Latino. *Id.* Only three of the proposed neutrals appear to be African-American—two men, and one woman. *Id.* Worse yet, one of the African-American men suggested is a partner at the law firm that represents Iconix *in the underlying Arbitration*, Blank Rome, creating a blindingly obvious conflict of interest. *Id.* Presently, Petitioners cannot determine whether the only two proposed African-American candidates have conflicts that would similarly disqualify them. *Id.* Moreover, using the AAA's search tips, Petitioners were unable to identify whether all of these individuals actually belong to AAA's Large and Complex Cases Roster. *Id.*

The lack of African-American arbitrator candidates stands in stark contrast to the proclamation on the AAA's website that the AAA prioritizes engaging arbitrators from diverse backgrounds. *Id.* ¶ 36. In reality, the AAA lacks any meaningful selection of African-American arbitrators who specialize in complex commercial disputes. *Id.* ¶ 37. A further breakdown by area of dispute reveals even less diversity in certain areas: commercial cases have only 17 percent "diverse" arbitrators—which refers to both women *and* minorities, without specifying the number of African-American arbitrators—while insurance and construction law "diversity" falls to just 10 percent, which again includes both women and minorities. *Id.* ¶ 38.

Rather than address Petitioners' concern that they were never given an adequate choice of arbitrators, the AAA presented Petitioners with an ultimatum: either Petitioners make selections from the existing sample they reviewed (plus the individuals the AAA identified in response to Petitioners' concerns), or the AAA would make selections for Petitioners. *Id.* ¶ 33. The following

day, the AAA did just that. *Id.* Implicitly recognizing the legitimacy of Petitioners' complaint, the AAA included the lone African-American man and woman in the list of twelve individuals it sent to the parties. *Id.*

Now, AAA insists that Petitioners select from the list of twelve arbitrator candidates. *Id.* ¶ 35. Indeed, AAA has imposed a deadline of November 30, 2018 for the parties to strike up to four of the twelve candidates. *Id.* As the AAA warned, "[i]f the list of arbitrators is not returned by the date specified," they will proceed to appoint an arbitrator without ever giving Petitioners a meaningful and representative choice. *Id.*

ARGUMENT

I. THE COURT SHOULD GRANT A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTIVE RELIEF PENDING RESOLUTION OF THE ARTICLE 75 PETITION

Petitioners are entitled to a temporary restraining order and preliminary injunction against the Arbitration pursuant to CPLR 6301 to allow the Court to determine the Article 75 Petition and in light of the November 30, 2018 deadline for arbitrator selection. Such temporary and preliminary injunctive relief is appropriate where, as here, the movant can show (i) a likelihood of success on the merits; (ii) danger of irreparable injury in the absence of injunctive relief; and (iii) a balance of equities in its favor. CPLR § 6301; *see Rinaolo v. Berke*, 188 A.D.2d 297, 297-98 (1st Dep't 1992) (affirming grant of plaintiff's motion for injunction staying arbitration).

All of these requirements are met here. As set forth below, Petitioners can demonstrate a high likelihood of success on their request for a stay under CPLR § 7503(b) because the arbitration clause is void as against public policy. The arbitration clause specifies arbitration before the AAA, but the AAA's arbitration procedures, and specifically its roster of neutrals for Large and Complex Cases in New York, deprive Mr. Carter and his companies of the equal protection of the laws and equal access to public accommodations. Such procedures violate New York public policy against

discrimination. The AAA's misleading statements regarding its slate of diverse arbitrators also mislead consumers into believing that they will receive a fair and impartial adjudication. Petitioners' showing that the AAA procedures violate New York law in any one of these ways necessitates a holding that the arbitration clause is void as against public policy, and the instant Arbitration may not proceed before the AAA.

Absent a stay, Petitioners will suffer irreparable harm by being forced to participate in the ongoing Arbitration, expending resources to do so, even though the arbitration clause is void as against public policy. Requiring Petitioners to arbitrate also would irreparably harm Petitioners because their claims could be rendered moot. Finally, the prejudice to Respondents of granting Petitioners' application is minimal when compared to the deprivation Petitioners would experience if deprived of a meaningful opportunity to have their claims adjudicated by a neutral decision maker who reflects Mr. Carter's background and experience.

A. Petitioners Are Likely To Succeed In Showing The Arbitration Must Be Stayed Because The Arbitration Clause Is Void As Against Public Policy

Petitioners are likely to succeed demonstrating the Arbitration must be stayed because the AAA's procedures in this instance violate New York's public policy against racial discrimination and run afoul of New York constitutional and statutory law. As a result, the arbitration clause is void as against public policy.

1. The Arbitration Clause Violates New York's Public Policy Against Racial Discrimination As A Result Of The AAA's Failure To Provide African-American Neutral Decision Makers To Petitioners

Without question, New York has a strong public policy against discrimination based on race. The AAA, by failing to provide African-American neutral decision makers for arbitration of Large and Complex Cases, runs afoul of this public policy. As a result, the arbitration clause is void as against public policy.

Contracts are unenforceable as violating public policy if New York law "has expressed a concern for the values underlying the policy implicated." *Walters v. Fullwood*, 675 F. Supp. 155, 161 (S.D.N.Y. 1987). This tenet holds true "regardless of how freely and willingly [the contracts] are entered into." *In re Ionosphere Clubs, Inc.*, 262 B.R. 604, 617 (Bankr. S.D.N.Y. 2001). These principles apply with full force to arbitration agreements that violate New York public policy. *See Brady v. William Capital Group, Inc.*, 14 N.Y. 3d 459, 464 (2010) (reasoning that arbitration provision that required party to pay arbitration fees "so high as to discourage her from vindicating her state and federal statutory rights in the arbitral forum," would be void as against public policy); *D'Agostino v. Forty-Three East Equities Corp.*, 12 Misc. 3d 486, 488 (Sup. Ct. N.Y. Cty. 2006) (declining to enforce arbitration clause in lease when public policy dictated single forum for resolution of disputes involving enforcement of laws concerning housing standards); *Walters*, 675 F. Supp. at 162 (citing *Durst v. Abrash*, 22 A.D.2d 39 (1st Dep't 1964), *aff'd*, 17 N.Y.2d 445 (1965) (declining to compel arbitration of claim arising under usurious agreement). In such instances, the arbitration must be stayed and should not proceed. *See, e.g.*, *Larrison v. Scarola Reavis & Parent LLP*, 11 Misc. 3d 572, 578-79, 581 (Sup. Ct. N.Y. Cty. 2005) (granting permanent stay or arbitration where arbitration clause violated public policy); *Toffler v. Pokorny*, 157 Misc. 2d 703, 709 (Sup. Ct. Nassau Cty. 1993) (staying arbitration "attempting to enforce an agreement that is patently unethical and therefore illegal"); *cf. Matter of Board of Educ. v. Barker Cent. Sch. Dist. (Barker Teachers Union)*, 209 A.D.2d 945, 945-46 (4th Dep't 1994) (holding arbitration should have been permanently stayed where contract contravened New York statutory law). Similarly, contracts between private parties that discriminate on the basis of race or another suspect classification are unenforceable. *Cilberti v. Angilletta*, 61 Misc. 2d 13, 20 (Sup. Ct. N.Y. Cty. 1969) (restrictive covenants that discriminate on the basis of race unenforceable); *Gast v. Gorek*,

211 N.Y.S.2d 112, 113 (Sup. Ct. N.Y. Cty. 1961) ("That the [racist] covenant cannot be enforced by injunction is clear.").

As has long been established, "[d]iscrimination against minority groups is against the public policy of this state and nation. It cannot be justified and will not be tolerated for any reason." *State Commission for Human Rights v. Farrell*, 47 Misc. 2d 244, 246 (Sup. Ct. N.Y. Cty. 1965). Mr. Carter is African American and therefore a member of a minority group. When Mr. Carter sought to choose from a list of neutral decision makers for Large and Complex Cases, as provided by the AAA, he was confronted with a list of approximately 200 arbitrators. Petitioners could not identify a single African-American arbitrator with the background and experience to preside over the Arbitration. Only after Mr. Carter addressed his concern with the AAA did it provide the names of two eligible African-American candidates. The AAA's failure to associate with African-American arbitrators with the expertise to decide complex commercial disputes deprives litigants of color of a meaningful opportunity to have their claims heard by a panel of arbitrators reflecting their backgrounds and life experience, and all but excludes the voices of diverse decision makers in the arbitration process. Such exclusion risks an unconscious bias in decision-making because "negative images of 'the others' is pervasive and exists in almost every person, including Caucasians, Asians, non-white Hispanics, African Americans, and other minorities." Larry J. Pittman, *Mandatory Arbitration: Due Process and Other Constitutional Concerns*, 39 Cap. U. L. Rev. 853, 862 (2011). "Because of the pervasiveness of unconscious racism, arbitrators are not exempted from its negative influences, which might appear during arbitration hearings." *Id.*

The failure of the AAA to provide Petitioners with African-American decision makers for Large and Complex cases violates New York public policy against racial discrimination. As a

result, Petitioners are exceedingly likely to succeed on their claim that the Arbitration must be stayed because the arbitration clause is void as against public policy.

2. The Arbitration Clause Violates Public Policy Because The AAA's Procedures For Large And Complex Cases Violate New York Law In This Instance

Beyond the general public policy against discrimination, the AAA procedures violate the Equal Protection Clause of the New York State Constitution, New York State Human Rights Law § 296(2)(a) ("NYSHRL"), New York City Human Rights Law, N.Y.C. Admin. Code § 8-107 ("NYCHRL"), New York State Civil Rights Law § 40 ("NYSCRL"), and the New York Deceptive Practices Act, N.Y. G.B.L. § 349. Because the AAA procedures do not comport with New York law, the arbitration clause requiring arbitration before the AAA is void as against public policy. To hold otherwise would be to enforce an unlawful contractual provision.

At bottom, each of Equal Protection Clause of the New York State Constitution, NYSHRL § 296(2)(a), NYCHRL § 8-107, and NYSCRL § 40 make unlawful discrimination based on race. When institutions—like the AAA—perform "public function[s] ordinarily entrusted to the State," they may not discriminate based on race. *Under 21, Catholic Home Bureau for Dependent Children v. City of New York*, 126 Misc. 2d 629, 642-43 (Sup. Ct. N.Y. Cty. 1984). The courts' role in providing support to, affirming, and vacating arbitration awards under both the Federal Arbitration Act and Article 75 of the CPLR inextricably entangles the AAA with state action, subjecting the AAA to the constitutional limitations on discrimination. *Perez v. Sugerman*, 499 F.2d 761, 764 (2d Cir. 1974) (holding that private conduct becomes "subject to the constitutional limitations placed upon state action" when it is "entwined with governmental policies or so impregnated with a governmental character"); *see also Matter of Estate of Wilson*, 59 N.Y.2d 461, 478 (1983). Moreover, by virtue of the ubiquitous nature and availability of arbitration, the AAA is a place of "public accommodation" under NYSHRL § 296(2)(a), NYCHRL § 8-107, and

NYSCRL § 40, that is not "distinctly private." *See U.S. Power Squadrons v. State Human Rights Appeal Board*, 59 N.Y.2d 401 (1983).

New York law has long recognized the importance of the right to a factfinder drawn from a pool of citizens that represents the community to ensure that parties from all backgrounds receive equal treatment in civil and criminal litigation. *See People v. Kern*, 75 N.Y.2d 638, 649 (1990) (adopting reasoning from *Batson v. Kentucky*, 476 U.S. 79, 87 (1986), requiring the right to an impartial jury drawn from the cross-sections of the community); *see also Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 630-31 (1991) (applying *Batson* reasoning to private litigants). As the United States Supreme Court has reasoned in the analogous situation of jury selection, "selection procedures that purposefully exclude black persons from juries undermine public confidence in the fairness of our system of justice," and violate the right to equal protection under the laws. *Batson*, 476 U.S at 79.

The AAA has discriminated against Mr. Carter on the basis of his race by denying him privileges equal to those afforded to other non-minority parties. By failing to associate with and provide African-American arbitrators with expertise in complex commercial cases, the AAA deprives Mr. Carter of a meaningful opportunity to have their claims heard by a panel of arbitrators who reflect their backgrounds and life experiences, and excludes voices of diverse decision makers from the arbitration process. And because the AAA opens itself up to the public and oversees arbitrations related to all variations of business and consumer disputes, it is subject to the protections New York's civil rights laws provide. The failure to provide African-American arbitrators with experience in complex commercial cases violates the Equal Protection Clause of the New York State Constitution, the New York State Human Right Law, the New York City Human Rights Law, and the New York State Civil Right Law. Petitioners thus seek to vindicate

a public right by pursuing greater access to and use of diverse arbitrators. *Summers v. County of Monroe*, 147 A.D.2d 949, 949 (1989).

The AAA's procedures are particularly harmful in light of AAA's misleading statements on its website about the diversity of its slate of arbitrators, which violate the New York Deceptive Practices Act, N.Y. G.B.L. § 349. That statute makes it unlawful for "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any services." *See also Small v. Lorillard Tobacco Co.*, 94 N.Y.2d 43, 55 (1999) (holding that a claim under N.Y. G.B.L. requires a showing that a business engaged "in an act or practice that is deceptive or misleading in a material way and that plaintiff has been injured by reason thereof") (internal quotation marks omitted). The AAA advertises on its website that it prioritizes diversity and promotes "the inclusion of those individuals who historically have been excluded from meaningful and active participation in the alternative dispute resolution (ADR) field." American Arbitration Association, AAA Diversity Initiative, last visited Nov. 28, 2018, https://www.adr.org/DiversityInitiative. The AAA boasts that women and minority arbitrators make up 24% of its roster of neutrals. American Arbitration Association, Roster Diversity and Inclusion, last visited Nov. 28, 2018, https://www.adr.org/RosterDiversity. In reality, however, the AAA only provided two eligible African-American arbitrator candidates when prompted, who may or may not be qualified to adjudicate a complex commercial dispute. These misrepresentations by the AAA, to the detriment of Petitioners, render the arbitration clause as applied in these circumstances a violation of New York law, and void as against public policy. *See Chassman v. People Resources*, 151 Misc. 2d 525, 528 (Sup. Ct. N.Y. Cty. 1991) (finding arbitration clause unenforceable because contract violated New York statute designed to protect consumers).

B. Petitioners Will Suffer Immediate And Irreparable Injury Absent Temporary And Preliminary Injunctive Relief Staying The Arbitration

The AAA's procedures, as applied in this instance, are contrary to New York public policy and violate the Equal Protection Clause of the New York State Constitution, various state civil rights laws, and the New York Deceptive Practices Act. Notwithstanding these violations, the AAA has indicated to Mr. Carter that if he does not choose an arbitrator by November 30, 2018, the AAA will appoint one for him—ensuring that Mr. Carter will not be given a meaningful and representative choice.

If this Court holds that the arbitration clause is void as against public policy, the harm to Petitioners in the pending Arbitration would be significant. They would be forced to participate in a proceeding that violates a core public policy of the State—to rid institutions in New York of a discrimination on the basis of race. While not every arbitration clause violates this strong public policy, the AAA's process as applied in this instance does. Irreparable harm exists where the movant "would be irreparably harmed by being forced to expend time and resources arbitrating an issue that is not arbitrable, and for which any award would not be enforceable." *Maryland Cas. Co. v. Realty Advisory Bd. on Labor Relations*, 107 F.3d 979, 985 (2d Cir. 1997); *see Merill Lynch Inv. Mgrs. v. Optibase, Ltd.*, 337 F.3d 125, 129 (2d Cir. 2003) (same).

Petitioners also would be "forced into an unconstitutional proceeding," and the requested relief—a change to AAA's panel of arbitrators to include diverse neutrals—risks being rendered moot. *Duka v. S.E.C.*, No. 15-CV-357, 2015 WL 5547463, at *12, 21 (S.D.N.Y. Sept. 17, 2015) (collecting cases); *119 Spring LLC v. 199 Spring St. Co., LLC*, No. 13-CV-652593, 2013 WL 6240430, at *6 (Sup. Ct. N.Y. Cty. Dec. 2, 2013) (noting irreparable harm may be found where "denial of injunctive relief would moot the final judgment").

For these reasons, Petitioners more than demonstrate irreparable harm absent an injunction.

C. The Balance Of Equities Favors Petitioners

The equities also favor issuance of a stay in these circumstances. In weighing the equities, the court should consider whether "the irreparable injury to be sustained by the [petitioner] is more burdensome to it than the harm caused to [respondent] through imposition of the injunction." *Burmax Co. v. B&S Indus., Inc.*, 522 N.Y.S.2d 177, 179 (2d Dep't 1987) (internal quotation marks omitted). If the Arbitration is not enjoined, Petitioners will be forced to participate in a proceeding that may ultimately be deemed invalid by this Court and will incur significant additional legal fees and expenses to vindicate their rights under New York law. The harm that would befall Respondents is minimal. Respondents would experience a small delay while the parties work with the AAA to identify a slate of African-American arbitrators with the necessary background and expertise. And, even if that fails, Respondents simply will be required to litigate in court—a small burden given that Respondents already have engaged in a federal court lawsuit against Mr. Carter. Any burden on Respondents is far outweighed by the societal harm from requiring dispute resolution in a biased forum that runs afoul of New York public policy.

CONCLUSION

For the reasons set forth above, Petitioners respectfully request that this Court enter a temporary restraining order and preliminary injunction staying the AAA arbitration.

DATED: New York, New York
November 28, 2018

Respectfully Submitted,

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Certification of Word Count

The undersigned hereby certifies that the foregoing MEMORANDUM OF LAW IN SUPPORT OF THE ORDER TO SHOW CAUSE FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION contains 4,395 words according to the word count of the word-processing software used to prepare the response, excluding the caption, table of contents, table of authorities, and signature block.

/s/ Alex Spiro
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